IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1242 of 1984
With
FIRST APPEAL No. 1243 of 1984
With
FIRST APPEAL No. 1328 of 1984
With
FIRST APPEAL No. 1329 of 1984
With
FIRST APPEAL No. 1330 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TAKHUBEN VASHRAMBHAI OD & 4 - Appellant(s)
Versus
SHEIKH NAJIRMIYA MOHMADMIYA & 3 - Defendant(s)

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Appearance :
MR PS CHAMPANERI for Appellant(s) : 1 - 5.
None for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 2 - 3.
MR RR MARSHALL for Defendant(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 22/01/2007

COMMON ORAL JUDGMENT

1. All these appeals arise from common judgment and award dated 22nd December, 1982 by the Motor Accident Claims Tribunal (Auxi), Surendranagar in Motor Accident Claim Petition Nos. 8 of 1982 and its allied petitions. They are heard together and they are disposed of by this common judgment.

2. The accident in question occurred on 16.01.1981 near village Bodia in Limbdi taluka on the National Highway. On the date of the accident, the victims were traveling in the truck, bearing Registration No. GTB 6970. It was the case of the claimants that the truck was driven in a rash and negligent manner; as a result the driver lost control over it and it turned turtle. Two persons died and seven others received injuries.

Motor Accident Claim Petition No. 8 of 1982 was filed by the heirs of deceased Manjuben, daughter of Vashrambhai aged 18 years for obtaining compensation of Rs.25,000/-, Motor Accident Claim Petition No. 9 of 1982 was filed by the heirs of Labhuben Vashrambhai for claiming Rs.15,000/- by way of compensation, Motor Accident Claim Petition No. 10 of 1982 was filed by Sardul Vashrambhai claiming Rs.15,000/- for personal injury, Motor Accident Claim Petition No. 11 of 1982 was filed by Manaji Vashrambhai claiming Rs.15,000/- for personal injury, Motor Accident Claim Petition No. 12 of 1982 was filed by Lalji Zaver claiming compensation of

Rs.15,000/- for personal injuries received by him in the accident and Motor Accident Claim Petition No. 13 of 1982 was filed for death of Vashrambhai for claiming compensation of Rs.50,000/-. Before the Tribunal, the parties filed pleadings. It was contended by the Insurance Company that it was not liable to pay any compensation since the driver of the insured had committed breach of the condition of the policy. It was also contended that the victims were gratuitous passengers in the goods vehicle and, therefore, their risk was not covered.

Before the Tribunal, the parties also led oral as well as documentary evidence. On the basis of the material produced during hearing, it determined compensation, however, it accepted the say of the Insurance Company and absolved it from satisfying the liability of the insured. In other words, only insured was directed to satisfy the award.

First Appeal Nos. 1242 of 1984 and 1243 of 1984 have been filed by the original claimants and First Appeal Nos. 1328 of 1984, 1329 of 1984 and 1330 of 1984 have been filed by the original insured.

2. I have heard the advocates appearing for the parties. It is contended by Mr. Devang R. Bhatt learned advocate appearing for Mr. P.S. Champaneri for the appellants in First Appeal Nos. 1242 of 1984 and 1243 of 1984 that the Tribunal has committed error in holding that the victims were traveling as

paid passengers in the truck. He has further submitted that the evidence on record clearly shows that they were working as labourers and they were traveling in the vehicle at the relevant time in the capacity of labourer of the insured. He has submitted that the Insurance Company has been wrongly absolved from its liability to satisfy the award. The same are the contentions of Mr. Vikram Thakore, learned advocate appearing for the appellants in First Appeal Nos. 1328 of 1984, 1329 of 1984 and 1330 of 1984. As against that, Mr. R.R. Marshall, learned advocate appearing for the Insurance Company, has supported the judgment of the Tribunal. It is submitted by him that, considering the oral evidence, it is clear that the victims were traveling as paid passengers in the vehicle and thereby the insured had committed breach of the terms of the policy.

3. I have carefully considered the rival submissions. I have also perused the record and proceedings of the case. To ascertain whether the Tribunal has committed error in deciding the issue with regard to the liability, it is necessary to re-appreciate the oral evidence.

Takhuben, daughter of Bhanabhai and widow of Vashrambhai, is witness No.1 for the claimants. Her evidence is at Exh.48. She has stated that, in the accident, her husband and two daughters have died. She has further stated that they were working with Bhanvarlal Marwadi. Said Bhanvarlal was manufacturing

brick. To fetch the earth, he had hired the truck belonging to Usmangani Gulamnabi Ghanchi- original opponent No.3 in First Appeal Nos. 1328 of 1984 to 1330 of 1984. She has further stated that they were working with Marvadi for two to three years. She has further stated that they were traveling as labourers in the offending vehicle, i.e. the truck. For about six months prior to the date of the accident, they were working as labourers. She has also stated that for working on the truck, her husband used to earn Rs.300 to 400/- per month and her daughters used to earn about Rs.200/- each per month. She has further stated that the truck was engaged by Bhanvarlal Marwadi for bringing the earth to his brick kiln. She has stated that her daughters were of the age of 15 and 12 years and they were generating income by working with Bhanvarlal Marwadi. Her third daughter Lakhu was aged about 7 years. She was also doing labour work and earning some money. In the cross-examination, she has deposed that deceased Vashrambhai, i.e. her husband, used to earn daily wage of Rs.10/-. She had no personal knowledge about the manner in which the accident took place.

Lalji Zaver is witness No.2 of the applicants. He has deposed that he was working as a labourer in the brick kiln. He has also stated that, if there was no work in the kiln, they used to work on the truck. According to him, the truck belonged to Usmangani Gulamnabi and it was engaged by Bhanvarlal. He has stated that, on the date of the incident, he and his

uncle Vashrambhai and others had started from Muli and had gone to Sadla for bringing the earth. They filled up the earth in the truck and, thereafter, they started for Ahmedabad after halting at Muli for having a cup of tea. According to him, the truck was being driven with excessive speed, as a result of which, it toppled down and the passengers got trapped under the truck. He has stated that he had taken treatment for about 10 to 15 days. In the cross-examination, he has stated that it would take about 3 to 4 hours for filling the earth in the truck. He has denied the suggestion that the truck was not driven in a high speed. He has also denied the suggestion that he did not travel as a labourer in the truck. He had been confronted with the police statement but, he did not remember what he had stated before the police.

Manajibhai Vashrambhai is witness No.3 for the applicants. He has stated that they had started from Ahmedabad in the truck belonging to Usmangani Gulamnabi. He has stated that they had gone to fill earth in the truck. According to him, he got Rs.10/- to 15/- per day as labourer. He has further stated that they had filled earth from Sadla and it was to be emptied at Ahmedabad. According to him, the vehicle was driven at a full speed. Two rear wheels of the truck got detached and they came out of the truck. He sustained injury. In the cross-examination, he has stated that, after season of manufacturing brick is over, the truck would not be used for work

of the brick kiln.

Keshubha Pratapsinh- a police personnel is witness of the opponents and he has produced book containing the relevant FIR.

Usmangani Gulamnabi is the owner of the Truck. He has given his statement at Exh.77. According to him, he was allowing the labourers to travel in his truck. On the truck also, board displaying six labourers was fixed. He has further stated that warning was displayed that no person to be allowed to travel in the truck and he had instructed the driver not to permit any passenger in the truck except labourers. In the cross-examination, he has stated that he did not maintain any list of the employees who worked with him. He has denied that the victims were not traveling as labourers in the truck.

Witness Dama Sagar is Assistant Administrative Officer looking after the motor claims. His evidence is recorded at Exh.79. In his evidence, he has given certain details about the insurance policy in respect of the vehicle, bearing Registration No. GTB 6970, i.e. the offending truck. He has deposed that under the policy, additional premium has been paid and risk of four coolies and the driver and cleaner of the truck has been covered.

Considering the aforesaid oral evidence, there is no doubt in mind that the victims were traveling

in the offending vehicle at the time of accident as labourers from Muli and they had gone to Sadla where the truck was loaded with earth and it was being taken to Sarkhej- Ahmedabad for manufacturing bricks when on the way, the accident occurred. So far as the issue of negligence is concerned, the Tribunal has adequately discussed the evidence on that aspect. I have perused it. Each witness has stated that the vehicle was driven in high speed and in rash manner. No effective cross-examination has been made on that ground. Without any reason, the vehicle has turned turtle. It is, therefore,obvious that unless it was being driven in rash and negligent manner and in excessive speed, it would not have turned turtle. In view of the same, there is no reason for interfering with the conclusion drawn on that count by the Tribunal. The accident seems to have occurred solely due to the negligence of its driver.

4. I have also carefully perused the discussion of the evidence made by the Tribunal in its judgment with regard to the just compensation. Even the appellants of First Appeal Nos. 1242 of 1984 and 1243 of 1984 have not seriously challenged the same and they have not advanced any submission for enhancement of compensation. Sole controversy is whether the Insurance Company can be freed from its liability to satisfy the award. The Tribunal has concluded that the victims were traveling as paid passengers. Reliance has been placed on the evidence of witness Lalji Jiva, who has stated that the driver of the vehicle had collected Rs.50/- from them for three

passengers. The Tribunal has also kept in view the police statement and has observed that the say of the witnesses that they were traveling in the offending vehicle as labourers was not in consonance with the police statement. According to the Tribunal, it, therefore, clearly appears that the witnesses for the claimants were telling truth when they said that they were traveling as labourers. According to it, they were paid passengers and, therefore, the Insurance Company was not liable to satisfy the award. However, the evidence gives totally different picture. There is no reason to disbelieve these witnesses. The Tribunal ought not to have attached importance to the contradiction with the police statement. It is well known principle of law that such contradictions do not have any evidential value and the same cannot stand against the substantive evidence of a person when it stands duly corroborated by other circumstances. There is no dispute that at the relevant time, earth was lodged in the truck. In fact, that itself has become the root cause of the disaster since the victims got buried under it. There is also no dispute that it was going to Ahmedabad from village Sadla. Only the dispute is whether they were picked up by the driver of the truck when they were standing on the road and he had charged for permitting them to travel in the truck or whether they had accompanied the truck as labourers right from Muli to Sadla, where they loaded the truck with earth and from there to Ahmedabad. The consistent version of these witnesses is that they started from Muli and had loaded the earth at Sadla and thereafter traveled in the truck as labourers.

The Tribunal has relied on the version that appeared in the police statement. However, considering the fact that they were working in the brick kiln of one Bhanvarlal at Sarkhej and for manufacturing brick, earth was needed, the story given by them appears to be more plausible because, except them, no else was traveling in the truck who could have loaded earth in the truck at Sadla. It is a matter of common knowledge that such labourers always travel with truck because it is they who load and unload the vehicle with the concerned material. The evidence of other side does not controvert this aspect. Merely because the driver of the vehicle had collected some amount from them, it does not mean that they had paid fare for traveling in the truck. There were several persons in the truck but the evidence shows that Rs.50/- were collected by the driver for three passengers only. The driver of the truck has not been examined. Owner of truck Usmangani Gulamnabi completely corroborates the say of these witnesses. Therefore, the approach of the Tribunal in appreciating the evidence by placing more than due reliance on the contradictions is erroneous. Such finding is, therefore, required to be quashed and set aside. When the oral evidence does indicate that the victims were traveling in the truck by virtue of their employment as labourers by the owner of the brick kiln who had hired the truck, it obviously means that their risk stood adequately covered under the provisions of the Act. Such coverage may be to the extent as provided under the Act or even beyond it by virtue of contract between the parties, i.e. the Insurance Company and the insured. In the

instance case, the Insurance Company has granted wider coverage than the statutory limit by charging additional premium for four persons as can be seen from I.M.T.16 of the policy. So also is the deposition of Dama Sagar. The Insurance Company is even otherwise liable to cover the risk of such labourers to the extent of the liability arising under the Workmen's Compensation Act. It is, therefore, obvious that the Insurance Company is erroneously exonerated by the Tribunal from its liability to satisfy the award. For four persons, i.e. coolies, or labourers, traveling in the vehicle, there is contractual liability and it has to satisfy the entire award made in respect of such persons and for the rest of the persons, it will be to the extent of covering the liability arising under the Workmen's Compensation Act. So far as M.A.C.P. No. 13 of 1982 is concerned, the award is of Rs.35,000/-, which is higher than the limit prescribed under the Workmen's Compensation Act. So is the case in M.A.C.P. No. 8 of 1982. In M.A.C.P. No. 8 of 1982, it is Rs.19,000/-, In M.A.C.P. No. 9 of 1982, it is Rs.9,000/-. In M.A.C.P. No. 10 of 1982, it is Rs.900/- and in M.A.C.P. Nos.11 of 1982 and 12 of 1982, it is Rs.950/- each. It is, therefore, clear that where the amount has exceeded the limit prescribed under the Workmen's Compensation Act, the Insurance Company will have to satisfy the award in such cases. In other cases, it will automatically be limited to the liability under the Workmen's Compensation Act. In the present case, the appeals have been preferred in M.A.C.P. Nos. 8 of 1982, 13 of 1982 and 11 of 1982. In the first two, the award is Rs.19,000/- and

Rs.35,000/- whereas the limit prescribed under Workmen's Compensation Act at the relevant time was Rs.13,500/- and Rs.16,800/- respectively. The Insurance Company will, therefore, satisfy these awards fully. In the other cases, the award amounts are within limits prescribed under the Workmen's Compensation Act. In view of the same, these appeals are allowed.

5. R & P to be retransmitted to the concerned Tribunal.

(AKSHAY H. MEHTA, J.)

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